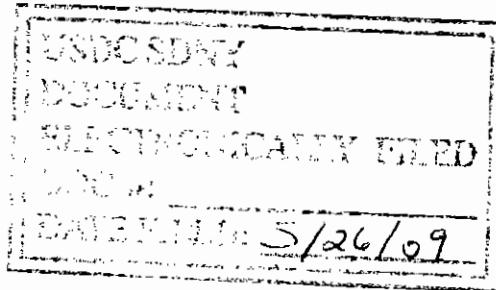


ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X  
ATHLETE'S FOOT BRANDS, LLC, :  
Plaintiff, :  
- against - :  
J.H.P. EAST FORDHAM, INC., :  
J.H.P. FLUSHING, INC., :  
J.H.P. NEWARK, INC., :  
PJH GRAND CONCOURSE, INC., :  
HP THIRD AVE., INC., :  
IBJAMAICA, INC., and :  
JANG PARK, :  
Defendants. :  
- - - - - X



Order

08 Civ. 11027 (LLS)

Plaintiff having filed a motion on April 23, 2009 to dismiss defendants' original counterclaims (except Count XI) under Fed. R. Civ. P. 9(b) and 12(b)(6), and defendants having filed amended counterclaims as of right on May 21, 2009,<sup>1</sup> the motion (Docket No. 52) is dismissed as moot, without prejudice.

So Ordered.

Dated: New York, NY  
May 26, 2009

*Louis L. Stanton*  
LOUIS L. STANTON  
U.S.D.J.

<sup>1</sup> See Fed. R. Civ. P. 15(a)(1)(A) (a "party may amend its pleading once as a matter of course . . . before being served with a responsive pleading"); Blazon, Inc. v. DeLuxe Game Corp., 268 F. Supp. 416, 430 (S.D.N.Y. 1965) ("Plaintiff's motion to dismiss the counterclaim was not such a responsive pleading and thus did not terminate [defendant's] right to amend under Rule 15(a).").